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*Counsel for FedEx Corporation,
 Federal Express Corporation and
 FedEx Corporate Services, Inc.*

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 14-380 (CRB)
)	
Plaintiff,)	DECLARATION OF CRISTINA C.
)	ARGUEDAS IN SUPPORT OF THE
v.)	FEDEX DEFENDANTS' MOTION TO
)	CONTINUE THE DATE FOR TRIAL
FEDEX CORPORATION, FEDERAL)	
EXPRESS CORPORATION, and FEDEX)	
CORPORATE SERVICES, INC.,)	
)	
Defendants.)	
)	

1 I, Cristina C. Arguedas, declare as follows:

2 1. I am a partner at Arguedas, Cassman & Headley, LLP, counsel of record
3 for defendants FedEx Corporation, Federal Express Corporation and FedEx Corporate
4 Services, Inc. (collectively, "FedEx") in the above-titled matter. I make this declaration
5 in support of FedEx's motion to continue the date for trial in this matter until September
6 12, 2016.

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8 2. The parties previously stipulated to, and the Court approved, an
9 "aggressive" pre-trial and trial schedule that called for the trial to begin in February
10 2016, with final pretrial motions to be filed on September 9, 2015 and heard November
11 4, 2015. See Docket #68 (scheduling order) & #69 (transcript of January 2, 2015
12 hearing). Since that time, FedEx requested and the Court issued pursuant to Federal
13 Rule of Criminal Procedure 17(c) a number of subpoenas *duces tecum* to various
14 federal and state law enforcement agencies. Docket #81, 85, 98, 105. The subpoenas
15 are designed to obtain evidence that will be crucial to FedEx's defense by showing its
16 good-faith cooperation with law enforcement efforts throughout the period covered by
17 the charges in the indictment. See Docket #88 & 96.

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19 3. The Clerk of the Court issued fourteen Rule 17(c) subpoenas on May 19,
20 2015; these subpoenas were directed to the United States Food and Drug
21 Administration ("FDA"), the Federal Bureau of Investigation ("FBI"), United States
22 Customs and Border Protection ("CBP"), the United States Postal Inspection Service
23 ("USPIS"), the Florida Department of Law Enforcement ("FDLE"), the Kentucky Office of
24 the Attorney General ("KOAG"), the Kentucky State Police ("KSP"), the Tennessee
25 Bureau of Investigation ("TBI"), the Sullivan County (Tennessee) Sheriff's Department,
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1 the Bristol (Virginia) Police Department, the Bristol (Tennessee) Police Department, the
2 West Virginia State Police, the West Virginia Board of Pharmacy. The subpoenas as
3 issued by the Court directed the agencies to comply by June 15, 2015.

4
5 4. FedEx counsel caused the subpoenas to be served upon each of the
6 fourteen law enforcement agencies.

7 5. After serving the subpoenas, counsel in my firm and other counsel for
8 FedEx contacted each of the subpoenaed agencies. Since the initial contacts, FedEx
9 counsel have been in frequent contact with representatives of the subpoenaed
10 agencies. FedEx counsel has communicated with agency counsel and other
11 representatives about, among other subjects, the agencies' capabilities for conducting
12 searches for responsive records and the contours of the searches to be conducted.

13
14 6. FedEx has periodically agreed to short extensions of the dates for
15 compliance with the subpoenas in order to accommodate the parties' continuing
16 discussions and the agencies' ongoing efforts to identify responsive records.

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18 7. Representatives of a number of the subpoenaed agencies have explained
19 that the agencies' searches for responsive records will take at least several more
20 months to complete:

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22 a. Counsel for the FDA indicated during a July 21, 2015 telephone call
23 that the FDA hopes to be able to begin producing documents responsive to the
24 subpoena within the next several weeks, but that it is unlikely to be able to complete its
25 production before September 15, 2015.

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27 b. Counsel for the FBI indicated during an August 6, 2015 telephone
28 call that the agency will likely be able to produce some responsive records within the

1 next three to four weeks, but that other responsive records will take substantially longer
2 to identify and review. The agency's representatives were unable to provide an
3 approximate deadline for completing the process because the agency is still working to
4 overcome some technical obstacles to its search of certain electronic files, and the
5 duration of the eventual search will depend in large part on the number of "hits" that
6 result from the application of search terms to files.
7

8 c. FedEx counsel spoke most recently on July 22, 2015 with counsel
9 for CBP. CBP indicated that the agency is undertaking to search its records for
10 responsive records. However, the agency's lawyers described that some of the older
11 email records that must be searched are presently stored in a format that is not
12 readable by the agency's software. Those emails must be converted to a readable
13 form. CBP counsel said that the conversion process would likely take approximately
14 three months to complete, and that the converted records could thereafter be searched.
15 Accordingly, the agency will be unable to complete its production of records until
16 sometime after the middle of October 2015.
17

18 d. FedEx counsel have been involved in ongoing discussions with
19 counsel for and representatives of USPIS, speaking most recently on August 5, 2015.
20 USPIS's representatives have indicated that the agency is undertaking to search its
21 records for responsive records. USPIS retained certain email records only pursuant to
22 a "disaster recovery" protocol, limiting the agency's ability to search those records, and
23 the agency is exploring options for harvesting the emails through the use of a vendor.
24 Even leaving that issue aside, the agency's representatives have stated that its
25 searches for responsive records will likely take two to three months to complete.
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1 e. FedEx counsel has communicated a number of times with a
2 representative from the FDLE. On July 10, 2015, FDLE representatives told FedEx
3 counsel that the agency will require sixty business days — i.e., until October 10th —
4 before the agency can begin producing documents. The agency has not yet been able
5 to provide a date by which its production will be completed.
6

7 f. FedEx counsel has also communicated with representatives for the
8 other subpoenaed agencies: the KOAG, the KSP, the TBI, the Sullivan County
9 (Tennessee) Sheriff's Department, the Bristol (Virginia) Police Department, the Bristol
10 (Tennessee) Police Department, the West Virginia State Police, and the West Virginia
11 Board of Pharmacy. A few of these agencies have reported that they are unable to
12 locate any responsive documents, or have produced records that purport to be all
13 responsive documents in the particular agency's custody and control; FedEx counsel is
14 in the process of speaking with these agencies about the contours of their searches to
15 ensure they were complete. Other agencies have reported that they are in the process
16 of searching for responsive records; these agencies have expressed that the searches
17 could take substantial time to complete. Although I expect that some of the remaining
18 state and local law enforcement agencies will be able to complete their search for and
19 production of records before September 2015, I also expect that at least a few of them
20 will be unable to do so.
21

22 8. The agencies' explanations for the delays in producing records appear
23 reasonable, as FedEx's subpoenas by necessity ask the law enforcement agencies to
24 search for records created, in some instances, more than a decade ago.
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26 9. Representatives for each of the federal agencies have cautioned FedEx
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1 counsel during telephone discussions that even once responsive records are identified,
2 the agencies may assert privileges and refuse to produce certain of those responsive
3 records.

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5 10. The U.S. Attorney's Office for the Northern District of California ("USAO")
6 continues to produce to FedEx additional Rule 16 discovery on a periodic basis. On
7 July 22, 2015, the USAO produced to FedEx more than 11 gigabytes of data, which
8 included more than 165,837 pages of documentary records, among other items. Based
9 on conversations with the prosecutors, I understand that additional discovery still
10 remains to be produced.
11

12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct to the best of my knowledge. Signed this 7th day
14 of August, 2015 in Berkeley, California.
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17 /s/
18 Cristina C. Arguedas
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